

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-565 (Sub-No. 14X)

NEW YORK CENTRAL LINES, LLC—ABANDONMENT EXEMPTION—
IN MONTGOMERY AND SCHENECTADY COUNTIES, NY

Decided: April 23, 2003

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively, applicants), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuance of Service for NYC to abandon and CSXT to discontinue service over approximately 6.3 miles of railroad from milepost QGW 159.6 to milepost QGW 165.9, between South Amsterdam in Montgomery County and Rotterdam Junction in Schenectady County, NY. Notice of the exemption was served and published in the Federal Register (68 FR 14473-74) on March 25, 2003.¹ The exemption is scheduled to become effective on April 24, 2003.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on March 28, 2003. In the EA, SEA states that the U.S. Natural Conservation Service (NRCS) has submitted comments stating that the majority of the Montgomery County portion of the rail is located on cut and fill land, and that there are some small areas of prime farmland located adjacent to the line. SEA therefore recommends that the following condition be imposed on any decision granting abandonment authority: that applicants shall consult with Mr. Thomas Bielli of the U.S. Natural Resources Conservation Service prior to salvage to determine appropriate measures to protect the areas of prime farmland. Comments to the EA were due by April 11, 2003. No comments were received. Accordingly, the condition recommended by SEA will be imposed.

SEA also indicates that the right-of-way (ROW) may be suitable for public use following abandonment. On April 14, 2003, the New York State Office of Parks, Recreation and Historic Preservation (New York) late-filed a request for the issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with applicants for acquisition of the right-of-way for use as a recreational trail. New York requests that applicants be barred from removing or destroying any potential trail-related structures, such as bridges,

¹ The notice also referenced STB Docket No. AB-55 (Sub-No. 629X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Montgomery and Schenectady Counties, NY.

trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment. New York states that this time period is needed to begin discussions with applicants as to the options for gaining public access to the property. New York has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 CFR 1152.29, and acknowledged that the use of the ROW for trail purposes is subject to future reactivation for rail service. In a response submitted by facsimile on April 22, 2003, applicants indicate their willingness to negotiate with New York for interim trail use.

Because New York's request complies with the requirements of 49 CFR 1152.29 and applicants are willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, NYC may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the ROW may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). New York has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the ROW, NYC must keep the remaining ROW intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the ROW that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, NYC is not required to deal exclusively with New York, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption for abandonment of the line described above is subject to the condition that applicants shall consult with Mr. Thomas Bielli of the U.S. Natural Resources Conservation Service prior to salvage to determine appropriate measures to protect the areas of prime farmland.
3. The notice of exemption served and published in the Federal Register on March 25, 2003, exempting abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, subject to the conditions that applicants be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels for a period of 180 days after the April 24, 2003 effective date (until October 21, 2003), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use.
4. If an interim trail use/rail banking agreement is executed before expiration of the 180-day period specified above, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line.
5. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (if the user is immune from liability, it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.
6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.
7. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
8. If an agreement for interim trail use/rail banking is reached by October 21, 2003, interim trail use may be implemented. If no agreement is reached by that time, NYC may fully abandon the line.

9. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary